

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

www.montgomerycountymd.gov/content/council/boa/index.asp

(240) 777-6600

Case No. S-2825

PETITION OF DONALD C. AND HANCY H. NALLE

OPINION OF THE BOARD

(Opinion Adopted April 18, 2012)

(Effective Date of Opinion: April 27, 2012)

Case No. S-2825 seeks approval under Section 59-G-2.00 of the Zoning Ordinance of a special exception for an accessory apartment. The subject property is Lot 104, Block J, Flower Hill Subdivision, located at 18448 Cape Jasmine Way, Gaithersburg, Maryland 20879 in the Planned Neighborhood Zone.

The Hearing Examiner for Montgomery County held a hearing on the application on February 9, 2012, closed the record in the case on February 23, 2012, and on March 26, 2012, issued a Report and Recommendation for approval of the special exception.

Decision of the Board: Special Exception **Granted** Subject to
The Conditions Enumerated Below.

The Board of Appeals considered the Report and Recommendation at its Worksession on April 18, 2012. After careful consideration and review of the record in the case, the Board adopts the Report and Recommendation and grants the special exception subject to the following conditions:

1. The Petitioners are bound by their testimony, representations and exhibits of record to the extent that such testimony and evidence are identified in the Hearing Examiner's Report and in this opinion;
2. The Petitioners must make the repairs needed to comply with the conditions set forth in the Memorandum of Wright Jolly, Housing Code Inspector,

Division of Housing and Community Affairs (Exhibit 14):

1. Install hard wired smoke detectors outside the sleeping areas in the basement and the main dwelling.
2. Repair wood split rail fence.
3. Petitioners must install a motion sensor exterior light fixture (residential wattage) to be located on the right side of the dwelling as noted on the revised Landscape and Lighting Plan (Exhibit 26).
4. No more than four family members or two unrelated persons may reside in the accessory apartment;
5. The main dwelling unit must not be occupied by a family of unrelated persons;
6. Petitioners must occupy one of the dwelling units on the lot on which the accessory apartment is located;
7. Petitioners must not receive compensation for the occupancy of more than one dwelling unit; and
8. Petitioners must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioners shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

On a motion by Stanley B. Boyd, seconded by Carolyn J. Shawaker, with Walter S. Booth, David K. Perdue, Vice-Chair, and Catherine G. Titus, Chair, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

Catherine G. Titus
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 27th day of April, 2012.

Katherine Freeman
Executive Director

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four months' period within which the special exception granted by the Board must be exercised.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.